PUBLIC SERVICE
EMPLOYEE RELATIONS BOARD

ANNUAL REPORT
for the

FISCAL YEAR ENDING MARCH 31, 1991

PUBLISHED BY AUTHORITY OF THE
PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

EDMONTON, ALBERTA

To His Honour
Gordon Towers
Lieutenant Governor of the Province of Alberta

May it please your Honour,

On behalf of the Public Service Employee Relations Board, I respectfully submit to you the Annual Report for the period from April 1, 1990, to March 31, 1991, pursuant to the requirements of Section 77 of the Public Service Employee Relations Act, Revised Statutes of Alberta, 1980, Chapter P-33 and amendments thereto.

Respectfully submitted,

Ken Rostad
Attorney General

To The Honourable Ken Rostad
Attorney General

Sir:

I have the honour to submit to you, on behalf of the Public Service Employee Relations Board, the Annual Report of the Board for the fiscal period April 1, 1990, to March 31, 1991.

Respectfully yours,

Thomas W. Wakeling
Chairman

personnel

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

Chairman — Thomas W. Wakeling

Alternate Chairman — Kenneth J. Alyluia

Members —

Thomas K. Biggs

William Kondro

Ken Kreklewetz

Kay Willekes

Executive Director — John F. Elsinga

Secretary — Gordon P. Procinsky

92-04494/

ANNUAL REPORT
OF THE
PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

FOR FISCAL PERIOD ENDING MARCH 31, 1991

introduction

The Public Service Employee Relations Act, Revised Statutes of Alberta 1980, Chapter P-33 came into force on September 22, 1977, upon proclamation by Order in Council 965/77. It was amended in 1983 and again in 1985.

Section 17 of the statute embraces the right of an employee to be a member of and to participate in the lawful activities of a trade union, and to bargain collectively with an employer through a bargaining agent. The Act prescribes final and binding arbitration for the resolution of collective bargaining disputes and prohibits strike or lockout action. An employer and bargaining agent may at any time in their collective bargaining make joint application for the appointment of a mediator to assist in settling their dispute.

The legislation also requires that every collective agreement contain a procedure for the resolution of differences between the contracting parties as to the interpretation, application, operation or alleged contravention of their collective agreement.

The Public Service Employee Relations Act describes in considerable detail the basis upon which employees are to be included in or excluded from a bargaining unit of employees. In that regard Sections 9 and 21 of the Act confer authority upon the Public Service Employee Relations Board to make final and binding determinations where the bargaining agent and employer are unable to settle the matter of employee status for collective bargaining purposes.

Section 48 of the Act precludes the referral of certain items in dispute between the bargaining parties to arbitration. The Public Service Employee Relations Board has the responsibility and authority under the statute to make such determinations, a function that is an integral part of the Board's activities with respect to each application it receives seeking the establishment of an arbitration board for the resolution of a collective bargaining dispute.

Part 8 of the Act prohibits employees, employers, trade unions and persons acting on their behalf from engaging in certain activities commonly referred to as unfair practices. In this part of the statute, the Public Service Employee Relations Board is given authority to inquire into complaints alleging such unfair practices and to impose remedial action when satisfied upon inquiry as to the substance of the complaint.

overview

The volume and complexity of the Board's caseload for the reporting period generated a marked increase in its hearing days and caucus sessions over the preceeding fiscal year. Although a substantial number of the applications processed by the Board dealt again with the determination of the bargaining unit status of employees, the Board was also confronted with a number of other significant applications and issues related to collective bargaining.

Several unfair labour practice complaints associated with applications by a trade union seeking to displace an incumbent and certified bargaining agent resulted in extensive hearings, and subsequently, the conduct of representation votes to determine the wishes of affected employees. As well, the Board processed a number of applications for the establishment of arbitration boards to resolve collective bargaining disputes.

The Board noted a welcome decline this fiscal period in the number of applications made to it requesting the appointment of persons to chair adjudication boards established to resolve differences between affected parties as to the interpretation, application or operation of their collective agreements.

While this year again a number of the Board's decisions were challenged in the courts, several of those actions were voluntarily discontinued before their scheduled hearing dates. Such court actions are discussed elsewhere in this report.

application

The Public Service Employee Relations Act governs collective bargaining and related matters for more than 55,000 public service employees and their employers within the Province of Alberta. The majority of those employees are employed directly by the Crown in right of Alberta in the various departments of the provincial government's administration. They are represented by The Alberta Union of Provincial Employees as their bargaining agent, and function under a common Master collective agreement and twelve supplementary contracts, structured on occupational groupings.

Other employers and their employees to whom the Public Service Employee Relations Act applies include the following:

Corporations
- Alberta Agricultural Development Corporation
- Alberta Mortgage and Housing Corporation
- Alberta Oil Sands Technology and Research Authority
- Alberta Opportunity Company
- Hail Crop Insurance Corporation

Commissions
- Alberta Alcoholism and Drug Abuse Commission
- Alberta Petroleum Marketing Commission
- Alberta Racing Commission

Universities (academic staff excluded)
- Athabasca University
- University of Alberta
- University of Calgary
- University of Lethbridge

Colleges (academic staff excluded)
- Alberta College of Art
- Banff Centre
- Fairview College
- Grande Prairie Regional College
- Grant MacEwan Community College
- Keyano College
- Lakeland College
- Lethbridge Community College
- Medicine Hat College
- Mount Royal College
- Olds College
- Red Deer College

Technical Institutes (academic staff excluded)
- Southern Alberta Institute of Technology
- Northern Alberta Institute of Technology

Hospitals	— Alberta Cancer Board — Alberta Children's Provincial General Hospital — Charles Camsell Provincial General Hospital — Foothills Provincial General Hospital — Glenrose Rehabilitation Hospital — The Mental Health Hospital Board, Edmonton — The Mental Health Hospital Board, Ponoka — University Hospitals Board
Boards	— Teacher's Retirement Fund Board — Workers' Compensation Board — Alberta Liquor Control Board (selected offices or departments only)
Councils	— Alberta Research Council

administration & personnel

The Public Service Employee Relations Board consists of a Chairman, Alternate Chairman and four members, all of whom participate in their respective capacities on an ad hoc basis. Thomas W. Wakeling was re-appointed Chairman of the Board effective November 4, 1989, for a term of two years. On January 11, 1990 Kenneth J. Alyluia was appointed as the Board's Alternate Chairman for a three-year term.

Jack Dyck and A. Roderick Turpin retired as Board Members during this fiscal year. Both served for seven years. They were replaced by Ken Kreklewetz and Kay Willekes, both of Edmonton, on the basis of two-year terms commencing November 29, 1990. They join current Board Members Thomas K. Biggs, of Coronation, and William Kondro of Lloydminster, Alberta.

The Board is served by five full-time employees, all located in the Board's Edmonton office.

judicial review — cases

Decisions of the Public Service Employee Relations Board which were the subject of judicial review during the reporting period include the following:

1. The Board of Governors of Lethbridge Community College,
   Lethbridge, Alberta
   (Applicant - Respondent)
   and
   The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Applicant - Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

On March 20, 1987, the Board issued a decision setting out its determinations as to the arbitrability of a large number of items claimed in dispute by the Union and Employer, as part of the processing of an application for the establishment of an arbitration board. On April 8, 1987 and April 14, 1987 respectively, the Union and Employer each applied to the Court of Queen's Bench for orders quashing certain parts of the Board's decision. In addition, both applied to the Board for reconsideration and variance of affected portions of the Board's decision.

The Court of Queen's Bench in a judgment delivered on June 6, 1987, upheld the Board's determinations on all but one matter, on which it reserved, pending issuance of the Board's reasons.

An appeal taken by the Union from that judgment was dismissed by the Alberta Court of Appeal on June 8, 1988. A subsequent application by the Union for leave to appeal to the Supreme Court of Canada was denied on December 8, 1988.

The matter on which the Court of Queen's Bench reserved judgment on June 6, 1987 was, following issuance of the Board's reasons, argued before the Honourable Mr. Justice E. A. Hutchinson. In a judgment issued February 1, 1989, the Court sustained the Employer's position and quashed the Board's determinations.

An appeal from that judgment initiated by the Board and the Union was heard and dismissed by the Alberta Court of Appeal on August 10, 1990. A further application by the Board and the Union for leave to appeal to the Supreme Court of Canada was denied on December 9, 1990.

(PSERB Ref. 140-063-502 and 105-063-502)

2. The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Applicant)
   and

Her Majesty the Queen in right of the Province of Alberta,
Edmonton, Alberta
(Respondent)
and
The Public Service Employee Relations Board,
Edmonton, Alberta
(Respondent)

This application for judicial review by the Union related to a decision and reasons issued by the Public Service Employee Relations Board on August 10, 1987. The Board determined that certain persons engaged by the Crown as "contract teachers" were not employees for the purposes of the Public Service Employee Relations Act.

A judgment dismissing that action was issued by the Court of Queen's Bench of Alberta on December 20, 1988. An appeal from that judgment initiated by the Union was subsequently abandoned.
(PSERB Ref. 100-001-502[12])

3. Her Majesty the Queen in right of the Province of Alberta,
Edmonton, Alberta
(Applicant)
and
The Alberta Union of Provincial Employees,
Edmonton, Alberta
(Respondent)
and
The Public Service Employee Relations Board,
Edmonton, Alberta
(Respondent)

This application for judicial review originated with a lengthy decision and reasons issued by the Public Service Employee Relations Board on February 19, 1989, concerning the implementation of earlier determinations made by the Board as to the bargaining unit status of certain persons employed by the Crown. The action by the Employer sought and was successful in quashing a portion of the Board's decision regarding its jurisdiction and remedial authority under Section 6 of the Public Service Employee Relations Act.

An appeal from the Court of Queen's Bench judgment taken by the Union is to be heard in the summer of 1991.
(PSERB Ref. 100-001-502[13])

4. Foothills Provincial General Hospital,
Calgary, Alberta
(Applicant)
and
The Alberta Union of Provincial Employees,
Edmonton, Alberta
(Respondent)

and
The Public Service Employee Relations Board,
Edmonton, Alberta
(Respondent)

In a decision with reasons issued on February 6, 1990. the Board declined to exercise its authority under Section 9 of the statute, to remove seven recreational therapists in the Hospital's employ from a bargaining unit represented by the Union. The Employer applied to the Court of Queen's Bench for an order quashing the Board's decision together with an order of mandamus remitting the application to the Board for determination as per the direction of the Court.

The action was dismissed by the July 23, 1990 judgment of the Honourable Mr. Justice H. S. Prowse. An appeal initiated by the Employer is pending.
(PSERB Ref. 100-041-502)

5. Her Majesty the Queen in right of the Province of Alberta,
Edmonton, Alberta
(Applicant)
and
The Alberta Union of Provincial Employees,
Edmonton, Alberta
(Respondent)
and
The Public Service Employee Relations Board,
Edmonton, Alberta
(Respondent)

On an application by the Union for the Board to determine an employee's bargaining unit status, the Employer raised a preliminary objection, arguing that the Board was without jurisdiction, as the subject individual held a position classified within the management classification plan, and further, that the individual had been excluded from the bargaining unit prior to proclamation of the Public Service Employee Relations Act in 1977. In a decision and reasons issued on January 17, 1990 the Board dismissed the Employer's preliminary objection and held that it had jurisdiction to make the requested determination.

The Employer applied for an order quashing the Board's decision. That action was dismissed by the Court of Queen's Bench of Alberta on October 11, 1991.
(PSERB Ref. 100-001-502[52])

6. Her Majesty the Queen in right of the Province of Alberta,
Edmonton, Alberta
(Applicant)
and
The Alberta Union of Provincial Employees,
Edmonton, Alberta
(Respondent)

and
The Public Service Employee Relations Board,
Edmonton, Alberta
(Respondent)

On an application for determination by the Union, the Board was asked to determine whether certain persons engaged under individual contracts to perform work for a government department involving the production of dinosaur specimens were employees and included in the bargaining unit. In a decision issued on April 3, 1990, the Board held the subject persons to be employees for the purposes of the statute rather than independent contractors.

The Employer on April 30, 1990 applied to the Court of Queen's Bench for an order to quash the Board's decision. The matter was subsequently resolved by the Union and the Employer and the action was discontinued.
(PSERB Ref. 100-001-502[44])

7. The Mental Health Hospital Board, Edmonton,
Edmonton, Alberta
(Applicant)
and
Health Care Employees Union of Alberta,
Edmonton, Alberta
(Respondent)
and
The Public Service Employee Relations Board,
Edmonton, Alberta
(Respondent)

In decisions issued on June 8, 1990 and June 11, 1990, the Board reported its determinations as to the arbitrability of a significant number of items claimed in dispute by the Union and Employer, following earlier decisions by the Board to establish arbitration boards to resolve disputes between the parties affecting three bargaining units.

The Employer by Originating Notice of Motion filed with the Court of Queen's Bench on June 26, 1990 sought an order to quash certain portions of the Board's decisions regarding items in dispute ruled to be arbitral.

On February 19, 1991 this action was concluded by the Employer with the filing of a formal Discontinuance of Action.
(PSERB Ref. 140-111-572)

ANNUAL STATISTICS AND COMPARATIVE DATA

APRIL 1, 1990 to March 31, 1991

Section of Act	Nature of Application	Disposition	1988/89	1989/90	1990/91
9	Determinations	Granted	13	4	38
		Dismissed	0	1	4
		Withdrawn	5	5	5
		Outstanding	22	40	8
11	Reconsideration	Granted	2	1	3
		Outstanding	0	1	0
		Refused	2	0	9
25	Certification	Granted	8	1	2
		Refused	2	1	0
		Withdrawn	0	0	0
		Outstanding	0	0	0
46	Appointment of Mediator	Granted	9	1	0
		Withdrawn	0	0	0
49	Establish Arbitration Board	Granted	1	2	7
		Refused	0	0	0
		Withdrawn	0	0	1
		Outstanding	0	4	0
52	Appointment of Chairman & Member to Arbitration Board	Granted	1	0	4
		Refused	0	0	0
		Withdrawn	0	0	0
64	Appointment of Adjudicator	Granted	35	23	10
		Withdrawn	9	3	3
		Refused	0	0	1
74	Unfair Practice Complaints	Granted	1	0	2
		Dismissed	1	1	0
		Refused/ Withdrawn	3	0	5
90	Successor Trade Union/Employer	Granted	0	0	1
		Dismissed/ Withdrawn	0	1	1

Days of Board Hearings	- 1988/89	23 Days
	- 1989/90	32 Days
	- 1990/91	43 Days
Estimated number of employees affected by Certification	- 1988/89	1615
	- 1989/90	278
	- 1990/91	640
Estimated number of persons affected by Determinations	- 1988/89	261
	- 1989/90	151
	- 1990/91	2055
Total applications disposed of	- 1988/89	70
	- 1989/90	45
	- 1990/91	96
Total applications outstanding	- 1988/89	22
	- 1989/90	45
	- 1990/91	8

budgetary review

Approved Manpower and Operating Costs

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

		% Change
1988/89	450,687*	-4.7*
1989/90	465,000**	+3.2**
1990/91	593,136***	+27.6***

* Includes $ 93,950 Special Warrant.
** Includes $ 51,200 Special Warrant
*** Includes $268,000 Special Warrant

in appreciation

The Board takes this opportunity to publicly express its appreciation to the Honourable Ken Rostad and his Executive Assistant, Ms. Dana Andreassen, for their assistance and co-operation in facilitating the activities of the Board during the period affected by this report.